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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,329	12/29/2000	Scott R. Lange	1443.001US1	7672

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EXAMINER

WACHTEL, ALEXIS A

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,329

Applicant(s)

LANGE ET AL.

Examiner

Alexis Wachtel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-31 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-31, 33-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4-5-04</u> | 6) <input type="checkbox"/> Other: _____ |

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Detailed Action

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2-8,12,14-36, 37 rejected under 35 U.S.C. 102(b) as anticipated by US 4,741,944 to Jackson et al.

With respect to claim 37, Jackson et al teaches the use of spunbonded fibers that are made of polypropylene (Col 5, line 1). Examiner notes that the spunbonded web functions as a gatherable layer. Polypropylene is a hydrophilic material.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,741,944 to Jackson et al.

Jackson et al teaches the use of spunbonded fibers that are made of polypropylene (Col 5, line 1). Examiner notes that the spunbonded web functions

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as a gatherable layer. Polypropylene is a hydrophilic material. However, Jackson et al fails to teach that the spunbonded is a homogenous mix of pulp and polypropylene fibers. However, it is well established that pulp is a hydrophilic fibrous material and would serve to improve the absorbative characteristics of the spunbonded if made as a blend of polypropylene and pulp. As a result it would have been obvious to one of ordinary skill to have employed a homogenous blend of pulp and polypropylene to make the spunbonded.

6. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,741,944 to Jackson et al in view of US 5,200,246 to Sabee substantially as set forth in the previous office action.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,741,944 to Jackson et al in view of US 5,508,102 to Georger et al substantially as set forth in the previous office action.

Response to Arguments

8. Examiner has reviewed Applicant's declaration which has been found to be unpersuasive. An analysis of the properties associated with an article weight of 72 g/m² is not commensurate in scope with the relied on prior art. Applicant has provided data only for an article weight of 72g/m². The prior art enables for an article weight of 50 to 90 g/m².

Applicant argues that an article weight of greater than 90 g/m² would still fail to provide the claimed properties. Applicant fails to provide specific experimental evidence to support this allegation and instead argues that the person having ordinary skill in the art would recognize that an increase in basis

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weight, e.g., to 90 g/m², would result with an increase in stiffness and cup crush of the material, thereby reducing the softness. Therefore, analyzing material prepared according to Jackson et al. at a basis weight above 72 g/m², the person having ordinary skill in the art would realize that the material prepared according to Jackson et al. would still not meet the limitations of the instant claims.

Furthermore, a person having ordinary skill in the art would recognize that a 20% reduction in the basis weight of the samples prepared according to Jackson, e.g., to 50 g/m², would not yield the 25% reduction in cup crush required to be within the scope of the pending claims. Support for this is demonstrated from the data for Sample 2 and Sample 3, in Table 2. (See specification at page 39.) In Table 2, the data show that an approximately 5% reduction in basis weight from 86g/m² to 82g/m² results in approximately 5% reduction in cup crush. In an analogous comparison of the material prepared and tested according to Jackson et al., one skilled in the art would predict that a 20% reduction in basis weight would yield a 20% reduction in cup crush. A 20% reduction in basis weight would reduce the cup crush value of the Jackson material to 149 g per cm. This is still well outside the scope of the pending claims.

However, Applicant cannot use Applicant's own data to make allegedly accurate guesses as to the resultant properties resulting from the use of Jackson et al's composite having a weight of 50 g/m² or 90g/m². Applicant must provide an evidentiary showing similar to that provided for a 72g/m² basis weight.

Additionally, Applicant argues that there is no motivation to combine the Jackson et al and Georger et al references or Jackson et al and Sabee. Jackson

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et al and Sabee were combined by the desire to improve the elastic web's

Elasticity as set forth in section 8 of office action filed 8-29-02.

Jackson et al and Georger et al were combined by the desire to improve

the abrasion resistance of the resulting elastic composite as set forth in section 9

of office action filed 8-29-02.

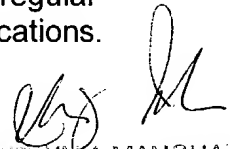
Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alex Wachtel, whose number is (703)-306-0320. The Examiner can normally be reached Mondays-Fridays from 10:30am to 6:30pm.

If attempts to reach the Examiner by telephone are unsuccessful and the matter is urgent, the Examiner's supervisor, Mr. Glenn Caldarola can be reached at (703) 308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.



VIRGINIA MANOHARAN
PRIMARY EXAMINER
ART UNIT 1321764
6/29/04